

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PLASTIC SURGERY ASSOCIATES, S.C.,
a Wisconsin corporation, INFINITY SPA
ORLANDO, LLC, a Florida corporation,
GREEN CHRYSALIS ENTERPRISE, LLC
d/b/a THE FACE PLACE, a Texas
corporation, RENEW SKIN & LASER
CENTERS, LLC d/b/a DERMACARE OF
HAMPTON ROADS, a Virginia corporation,
ARIZONA ADVANCED AESTHETICS,
PLLC d/b/a ENHANCED IMAGE MED
SPA, an Arizona corporation, ADVANCED
HEALTH WEIGHT LOSS, S.C. d/b/a
OPTIONS MEDICAL WEIGHT LOSS, an
Illinois corporation, *on behalf of themselves*
and all others similarly situated,

Plaintiffs,

v.

CYNOSURE, INC., a Delaware corporation,

Defendant.

VITA 4 LIFE, INC.,

Plaintiff,

v.

CYNOSURE, INC.,

Defendant.

Case No. 17-cv-11850 (cons.)

Hon. Denise J. Casper

Case No. 17-cv-11435 (cons.)

Hon. Denise J. Casper

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND
APPOINTMENT OF CLASS COUNSEL**

Plaintiffs Plastic Surgery Associates, S.C., Green Chrysalis Enterprise, LLC d/b/a The Face Place, Renew Skin & Laser Centers LLC d/b/a Dermacare of Hampton Roads, Arizona Advanced Aesthetics d/b/a Advance Image Med Spa, and Advanced Health Weight Loss d/b/a Options Medical Weight Loss, respectfully move the Court to certify, under Fed. R. Civ. P. 23(c)(4), a Nationwide Class, consisting of:

All individuals and entities in the United States who purchased or leased a SculpSure Non-Invasive Body Contouring Platform.

As set forth in detail in Plaintiffs' Memorandum in Support of Motion for Class Certification and Appointment of Class Counsel, Plaintiffs' Proffer of Common Evidence in Support of Motion for Class Certification and Appointment of Class Counsel, the Declaration of Mark T. Vazquez in Support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel and supporting exhibits, the proposed Class is appropriate for certification.

Plaintiffs seek to certify the Nationwide Class under Rule 23(c)(4) with respect to the issues of: (1) Was Cynosure engaged in "trade or business" when it sold SculpSure to Plaintiffs and the Class?; (2) Did Cynosure engage in a deceptive act or practice under Chapter 93A, §§ 2, 11, of the Massachusetts General Laws by representing SculpSure as a one-time treatment?; (3) Did Cynosure engage in a deceptive act or practice under Chapter 93A, §§ 2, 11, of the Massachusetts General Laws by representing SculpSure as "painless" or "pain-free" or "comfortable"?; and (4) Did Cynosure engage in a deceptive act or practice under Chapter 93A, §§ 2, 11, of the Massachusetts General Laws by representing SculpSure as a "hands-free" treatment that permitted the operator to leave the room during the procedure?

Plaintiffs have established the requirements of Fed. R. 23(a): (1) the Class is so numerous that joinder of all members is impracticable; (2) there are numerous questions of law and fact common to the Class; (3) Plaintiffs' claims are typical of the claims of the Class; and

(4) Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

Moreover, Plaintiffs have also established the requirements of Rule 23(b)(3) with respect to the issues they seek to certify; that is, (1) that common questions of law and fact predominate over any questions affecting only individual members and (2) that a class action is superior to any other available methods of adjudicating the controversy.

Plaintiffs also respectfully request that the Court appoint Hagens Berman Sobol Shapiro LLP as Class Counsel pursuant to Fed. R. Civ. P. 23(g). In appointing class counsel, the court must consider: “(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.”¹ The court may also consider “any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.”² To date, Hagens Berman has fairly and adequately represented the Class. It has expended significant resources and spent hundreds of hours investigating and litigating the claims of the Class, and will continue to do so. The firm also has significant experience litigating class actions in federal district courts all over the country, including the District of Massachusetts.³ And it has an accomplished track record of securing successful verdicts on behalf of millions of Class Members nationwide.⁴

¹ Fed. R. Civ. P. 23(g)(1)(A).

² Fed. R. Civ. P. 23(g)(1)(B).

³ See Declaration of Mark T. Vazquez in Support of Plaintiffs’ Motion for Class Certification and Appointment of Class Counsel, Ex. 112.

⁴ *Id.*

WHEREFORE, Plaintiffs respectfully request that the Court enter an order certifying the proposed Class with respect to the four enumerated issues, appointing Plaintiffs as the class representatives, and appointing Hagens Berman Sobol Shapiro LLP as class counsel.

REQUEST FOR ORAL ARGUMENT

The Court has already scheduled a hearing on this motion for June 20, 2019, at 1:00 p.m.

Dated: February 20, 2019

Respectfully Submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

By: /s/ Lauren Guth Barnes

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*Attorneys for Plaintiffs, Individually and on Behalf
of All Others Similarly Situated*

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the attorneys of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Lauren Guth Barnes

Lauren Guth Barnes